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SERVICE DATE - JANUARY 7, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33501

DOUGLAS M. HEAD, KENT P. SHOEMAKER AND CHARLES H. CLAY—
CONTINUANCE IN CONTROL EXEMPTION—RUTLAND LINE, INC.

Decided: December 11, 1997

On October 24, 1997, Douglas M. Head, Kent P. Shoemaker and Charles H. Clay (Petitioners) filed a petition for exemption from the prior approval requirements of 49 U.S.C. 11323-25 for their continuance in control of Rutland Line, Inc. (RLI). RLI was scheduled to become a Class III rail carrier upon consummation of its acquisition transaction that was the subject of the notice of exemption in Rutland Line, Inc.—Acquisition and Operation Exemption—The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 33500 (STB served Nov. 21, 1997, and published the same day at 62 FR 62401).¹ Petitioners state that all of the outstanding stock of RLI will be placed in an irrevocable voting trust pending our consideration of this petition for exemption. We will grant the exemption.

BACKGROUND

Petitioners are noncarrier individuals who currently control through stock ownership three other Class III common carriers by rail: Twin Cities & Western Railroad Company (TCW); Red River Valley & Western Railroad Company (RRVW), and Minnesota River Bridge Company (MRBC). TCW, RRVW, and MRBC are hereinafter collectively referred to as Affiliates.

TCW owns and operates approximately 143.87 miles of rail line between Hopkins, MN, and Appleton, MN. TCW also has trackage rights as follows: from milepost 578.93 at Appleton, MN, to milepost 612.74, near Milbank, SD; from BN milepost 13.27 at Lyndale Junction, MN, to BN milepost 9.54 (east leg of Wye) and BN milepost 10.05 (West leg of Wye), at Minneapolis Junction, Minneapolis, MN; from milepost 11.6, the former Shoreham Yard switch in Minneapolis, MN, to milepost 429.7 in St. Paul, MN; and from milepost 16.2, at St. Louis Park, MN, to milepost 13.7 in Minneapolis, MN.

¹ The transaction in STB Finance Docket No. 33500 was scheduled to be consummated on or after October 30, 1997. Because the exemption was filed on October 24, 1997, the acquisition and operation transaction could not have been consummated sooner than October 31, 1997.

RRVW owns and operates approximately 647.3 route miles of rail line principally in the State of North Dakota. RRVW also has trackage rights as follows: from milepost 6.04, at Wahpeton Junction, ND, to milepost 8.00 near Brushvale, MN; and from milepost 27.40, at Lucca, ND, to milepost 42.90, at Sheldon, ND.

MRBC owns approximately 1.11 miles of track, including a railroad bridge over the Minnesota River, from milepost 26.00, near the city of Bloomington, in Hennepin County, MN, to milepost 27.11, near the city of Savage, in Scott County, MN.

Concurrent with the filing of this petition for exemption, RLI filed a notice of exemption under 49 CFR 1150 Subpart D--Exempt Transactions to acquire approximately 23 miles of rail line from The Burlington Northern and Santa Fe Railway Company (BNSF) from milepost 42.67, at Geneseo Junction, ND, to milepost 65.60, at the North Dakota/South Dakota border (subject line).² RLI is acquiring BNSF's interest in certain spur trackage and real estate at Hankinson and Lidgerwood, ND. In addition, RLI is obtaining incidental operating rights to operate overhead rail freight services on BNSF's lines (1) from milepost 212.32, at Breckenridge, MN, to milepost 195.6, at Aberdeen Line Junction, MN, and (2) from milepost 0.00, at Aberdeen Line Junction, to milepost 0.60, at BN Junction, MN. Further, BNSF will also assign to RLI: (1) its operating rights under a July 5, 1955 agreement, extending from BNSF milepost 0.60, at BN Junction, to CPRS³ milepost 205.6, at Hankinson; and (2) its operating rights under a September 18, 1959 agreement, extending from CPRS milepost 205.6, at Hankinson, to BNSF milepost 42.67, at Geneseo Junction.

Because the line to be acquired by RLI connects via incidental trackage rights on CPRS and BNSF with RRVW at Breckenridge, MN, Petitioners' control of RLI would not qualify under the class exemption at 49 CFR 1180.2 (d)(2). Therefore, Petitioners must seek prior approval from the Board pursuant to 49 U.S.C. 11323(a)(5) or exemption from the statutory prior approval requirements pursuant to 49 U.S.C. 10502. Section 11323(a)(5) requires approval or authorization by the Board of an acquisition of control of a rail carrier by a person that is not a rail carrier but that controls any number of rail carriers. Petitioners request that the Board exempt their control of RLI from the prior approval requirements of section 11323 so that they may dissolve the voting trust and obtain control of RLI, in addition to their existing control of TCW, RRVW, and MRBC.

DISCUSSION AND CONCLUSIONS

² RLI will enter into an agency agreement with RRVW whereby RRVW will perform operations in RLI's name and for RLI's account on the subject line. However, RLI will retain the obligation to provide common carrier service on the subject line.

³ The CPRS milepost designation reflects the fact that some of the operations will be over joint BNSF/Soo Line Railroad Company track. CPRS is a reference to the Soo Line Railroad Company as an entity within the Canadian Pacific Rail System.

Under 49 U.S.C. 10502, we must exempt a transaction or service from regulation if we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

Regulation of these transactions is not necessary to carry out the transportation policy of 49 U.S.C. 10101. By allowing the Board to consider the acquisition of control of RLI by Petitioners under expedited procedures, an exemption would “minimize the need for regulatory control” and “provide for the expeditious handling and resolution of all proceedings” by relieving the Petitioners from the expense and delay that would be incurred if a formal control application under section 11323 were filed. [49 U.S.C. 10101(2)(15)]. RLI’s operation of the subject line creates an opportunity to continue and improve service and will thereby “ensure the development and continuation of a sound rail transportation system.” [49 U.S.C. 10101(4)]. Petitioners’ control of RLI will enable efficient operation over the subject line by facilitating the integration of certain operating functions. By permitting individuals experienced in railroad management to control rail carriers, an exemption will encourage “efficient management of railroads.” [49 U.S.C. 10101(9)]. Petitioners state that RLI will be operated by experienced, highly qualified professionals. Petitioners further state that RLI and RRVW, as the provider of service on the subject line, will operate in accordance with rules similar to those standard in the industry, and both will be subject to the safety requirements imposed on carriers by the Federal Railroad Administration, the Environmental Protection Agency, and other federal and state agencies. Thus, exemption by the Board of the control transaction will encourage “safe and suitable working conditions in the railroad industry” and the operation of transportation facilities and equipment “without detriment to the public health and safety.” [49 U.S.C. 10101(8) and (11)]. Other aspects of the rail transportation policy are not affected adversely.

Regulatory scrutiny of the proposed common control is not necessary to protect shippers from an abuse of market power. Control of RLI by Petitioners will simply add a separately incorporated Class III common carrier, which owns and operates over approximately 23 miles of rail line, and operates via incidental operating rights over another 60 miles of trackage, to a group of Class III common carriers already under the Petitioners’ control. Petitioners maintain that there are no shippers currently located on the line being acquired by RLI. Petitioners point out that each of the Affiliates is a corporate entity separate from RLI, and that any business dealings between RLI and the Affiliates will be the result of arms-length negotiations between the parties.

Because we find that the transaction would not result in abuse of market power, we need not find that the transaction is limited in scope.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. However, 49 U.S.C. 11326(c), does not provide for labor protection for transactions under section 11324 and 11325 that involve only Class III rail carriers. Because the proposed transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 11323-25 the continuance in control of Rutland Line, Inc. by Douglas M. Head, Kent P. Shoemaker and Charles H. Clay.
2. Notice will be published in the Federal Register on January 7, 1998.
3. This decision is effective on February 6, 1998.
4. Petitions for stay must be filed by January 20, 1998. Petitions to reopen must be filed by January 27, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

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MRBC owns approximately 1.11 miles of track, including a railroad bridge over the Minnesota River, from milepost 26.00, near the city of Bloomington, in Hennepin County, MN, to milepost 27.11, near the city of Savage, in Scott County, MN.

Concurrent with the filing of this petition for exemption, RLI filed a notice of exemption under 49 CFR 1150 Subpart D--Exempt Transactions to acquire approximately 23 miles of rail line from The Burlington Northern and Santa Fe Railway Company (BNSF) from milepost 42.67, at Geneseo Junction, ND, to milepost 65.60, at the North Dakota/South Dakota border (subject line).² RLI is acquiring BNSF's interest in certain spur trackage and real estate at Hankinson and Lidgerwood, ND. In addition, RLI is obtaining incidental operating rights to operate overhead rail freight services on BNSF's lines (1) from milepost 212.32, at Breckenridge, MN, to milepost 195.6, at Aberdeen Line Junction, MN, and (2) from milepost 0.00, at Aberdeen Line Junction, to milepost 0.60, at BN Junction, MN. Further, BNSF will also assign to RLI: (1) its operating rights under a July 5, 1955 agreement, extending from BNSF milepost 0.60, at BN Junction, to CPRS³ milepost 205.6, at Hankinson; and (2) its operating rights under a September 18, 1959 agreement, extending from CPRS milepost 205.6, at Hankinson, to BNSF milepost 42.67, at Geneseo Junction.

Because the line to be acquired by RLI connects via incidental trackage rights on CPRS and BNSF with RRVW at Breckenridge, MN, Petitioners' control of RLI would not qualify under the class exemption at 49 CFR 1180.2 (d)(2). Therefore, Petitioners must seek prior approval from the Board pursuant to 49 U.S.C. 11323(a)(5) or exemption from the statutory prior approval requirements pursuant to 49 U.S.C. 10502. Section 11323(a)(5) requires approval or authorization by the Board of an acquisition of control of a rail carrier by a person that is not a rail carrier but that controls any number of rail carriers. Petitioners request that the Board exempt their control of RLI from the prior approval requirements of section 11323 so that they may dissolve the voting trust and obtain control of RLI, in addition to their existing control of TCW, RRVW, and MRBC.

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Under 49 U.S.C. 10502, we must exempt a transaction or service from regulation if we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

Regulation of these transactions is not necessary to carry out the transportation policy of 49 U.S.C. 10101. By allowing the Board to consider the acquisition of control of RLI by Petitioners under expedited procedures, an exemption would “minimize the need for regulatory control” and “provide for the expeditious handling and resolution of all proceedings” by relieving the Petitioners from the expense and delay that would be incurred if a formal control application under section 11323 were filed. [49 U.S.C. 10101(2)(15)]. RLI’s operation of the subject line creates an opportunity to continue and improve service and will thereby “ensure the development and continuation of a sound rail transportation system.” [49 U.S.C. 10101(4)]. Petitioners’ control of RLI will enable efficient operation over the subject line by facilitating the integration of certain operating functions. By permitting individuals experienced in railroad management to control rail carriers, an exemption will encourage “efficient management of railroads.” [49 U.S.C. 10101(9)]. Petitioners state that RLI will be operated by experienced, highly qualified professionals. Petitioners further state that RLI and RRVW, as the provider of service on the subject line, will operate in accordance with rules similar to those standard in the industry, and both will be subject to the safety requirements imposed on carriers by the Federal Railroad Administration, the Environmental Protection Agency, and other federal and state agencies. Thus, exemption by the Board of the control transaction will encourage “safe and suitable working conditions in the railroad industry” and the operation of transportation facilities and equipment “without detriment to the public health and safety.” [49 U.S.C. 10101(8) and (11)]. Other aspects of the rail transportation policy are not affected adversely.

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